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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSION

NOV 0 1 2010

GAMBLING COMMISSION
COMM & LEGAL DEPT

In the Matter of the Suspension or
Revocation of the License to Conduct
Gambling Activities of:

Thongkhanh Phonethipsavath

Licensee.

OAH Docket No. 2010-GMB-0044

WSGC No. CR 2010-00649

INITIAL ORDER

1. STATEMENT OF THE CASE:

- 1.1 This case came before Administrative Law Judge Steven C. Smith for an administrative hearing on September 22, 2010 at the Washington State Gambling Commission Hearing Room in Lacey, Washington, after due and proper notice to all parties. The hearing was digitally recorded.
- 1.2 Licensee Thongkhanh Phonethipsavath (alternately "Phonethipsavath" or "Licensee" throughout) appeared, exercised his right to self-representation, and testified under oath.
- 1.3 The Washington State Gambling Commission (Commission) appeared through its legal counsel, H. Bruce Marvin, Assistant Attorney General.
- 1.4 Special Agent Julie Sullivan, investigator for the Commission, appeared and testified under oath on behalf of the Commission.
- 1.5 Also present were Nikorn Srisuwan and Terry Bach.
- 1.6 The Commission presented 24 exhibits, all of which were admitted without objection, excepting Exhibits 6 and 7 which were withdrawn by the Commission, and 20, 22, 23 and 24 which were not formally introduced by the Commission; rather they were provided by the Commission as an accommodation to the Licensee as documents the Licensee had originally provided to the Commission. Therefore, Exhibits 20, 22, 23 and 24 were treated as Licensee's exhibits. The Commission's exhibits were supplemented in some instances with certified copies of the same documents, with each supplement marked with the identical exhibit number and the letter "a". Phonethipsavath stipulated that the certified copies, although sometimes formatted differently from the uncertified copies,

were substantively the same and could be admitted. All supplemental exhibits were therefore admitted without objection.

1.7 Phonethipsavath presented 4 exhibits, all of which were admitted as Exhibits 20, 21, 22, 23 and 24 (see discussion at paragraph 1.6 above).

1.8 The parties were offered, but declined, the opportunity to meet between themselves to attempt resolution of the issues without hearing.

2. STATEMENT OF THE ISSUES:

2.1 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under RCW 9.46.075(1) and WAC 230-03-085(1), which provide that the Commission may suspend or revoke a gambling license for any reason it deems in the public interest, including a licensee's failure to comply with Washington State laws and regulations governing gambling.

2.2 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under RCW 9.46.075(4), which, among other things, provides that the Commission may revoke a license if the holder has pleaded guilty to a crime involving physical harm to an individual.

2.3 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-03-085 (2), which clarifies that a crime involving physical harm to an individual includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person.

2.4 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-03-085 (5), which provides that the Commission may revoke a gambling license if the holder is serving a term of probation or community supervision imposed as a sentence for any misdemeanor or felony offense.

2.5 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under RCW 9.46.075(7), which provides that the Commission may revoke a gambling license if the holder makes a misrepresentation of, or fails to disclose, a material fact to the Commission.

2.6 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-03-085, which provides that the Commission may revoke a gambling license if the holder has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state or federal level.

- 2.7 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-03-085 (7), which provides that the Commission may revoke a gambling license if the holder fails to provide any information required by Commission rules within the time required, or, if there is no established time, within 30 days after receiving written request from the Commission.
- 2.8 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-03-085 (8), which provides that the Commission may revoke a gambling license if the holder poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, or activities in the conduct of gambling activities, as demonstrated by: (A) prior activities, (B) criminal record, (C) reputation, (D) habits, or (E) associations.
- 2.9 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-06-085 (1) and (2), which requires a licensee to report all criminal actions filed against the licensee to the Commission within 30 days and requires the licensee to supply the Commission with a copy of the final written decision or settlement of any criminal charges within 30 days after the case is resolved.
- 2.10 Whether Licensee can establish that he is qualified to hold a gambling license in the State of Washington by clear and convincing evidence, as required by RCW 9.46.075 (8) and RCW 9.46.153 (1).

The Administrative Law Judge, having considered all of the evidence presented in this case, makes the following Findings Of Fact and Conclusions of Law:

3. FINDINGS OF FACT:

- 3.1 At all relevant times since 2001, Phonethipsavath has held, and presently holds a Public Card Room Employee License from the Washington State Gambling Commission; License No. 68-15937; at various times during the period 2001 through 2010, Licensee allowed his license to expire, then reapplied and received reinstatement of his license.
- 3.2 At the time of hearing, Phonethipsavath worked at Cable Bridge Casino in Kennewick, Washington.
- 3.3 On June 17, 2005, in Benton County District Court, Prosser, Washington, case number R17230, Licensee pled guilty to 4th Degree Assault, Domestic Violence, a crime involving physical harm to another.
- 3.4 On December 20, 2009, Licensee was cited for Simple Assault, Domestic Violence, an allegation of a crime involving physical harm to another. On

3.9 At hearing, the Licensee attributed his non-disclosures to "mistakes" and stated that they were "a part of life". The Licensee denied being violent. He offered no explanation as to why he would have pled guilty to domestic violence in the absence of any violent conduct. As to his violation of the no contact court order, the Licensee credibly testified that he violated the court order so that he could see his infant daughter. In substance, the Licensee acknowledged that, at the time he violated the court order, he understood what he was doing was unlawful, but that his priorities lead him to ignore the court order.

3.10 Licensee presented no credible evidence in mitigation of his willful misconduct.

3.11 Special Agent Sullivan has been with the Gambling Commission investigation unit since 2001. She has been part of the criminal history unit for the past three years. She has received extensive relevant training in the relevant fields. Based on her training and experience, as well as her personal investigation in this matter, it was her opinion that Licensee's foregoing criminal history, repeated failures to disclose that history, and his knowing and intentional violation of a court order, rendered the Licensee a threat to the effective regulation of gambling and justified the revocation of his gambling license.

4. CONCLUSIONS OF LAW:

Jurisdiction

4.1 Office of Administrative Hearings has jurisdiction over the person and subject matter herein pursuant to RCW 9.46.140, Chapter 34.05 RCW, and Title 230 WAC, including, especially, whether to deny a gambling license or permit application, or to suspend or revoke any gambling license or permit held by such person at the time the Commission issued the subject charges. WAC 230-17-001.

Burden Of Proof

4.2 Licensees bear the burden of establishing their qualifications by clear and convincing evidence. RCW 9.46.153(1). Each applicant and holder of a license issued pursuant to Chapter 9.46 RCW is subject to continuous scrutiny regarding his/her general character, integrity, and ability to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153.

Legislative Intent

4.3 The legislative intent expressed in RCW 9.46.010 justifies the high burden on licensees to demonstrate their qualifications and states in relevant part: "The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by

limiting the nature and scope of gambling activities by strict regulation and control." The statute further states: "All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end." In short, those persons who wish to work in this highly regulated industry are, by law, to be held to the very highest character and integrity standards.

License Suspension And Revocation

4.4 RCW 9.46.075(1) and (8) and WAC 230-03-085(1), (3), and (8), provide that the Commission may revoke a license for any reason which it finds is in the public interest, including where Licensee has violated or failed or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed under Chapter 9.46 RCW or any rules adopted by the Commission under law. Likewise, WAC 230-04-400(1) and (11) provide that the Commission may revoke a license for any action which violates 9.46 RCW. The Commission may, therefore, revoke the license(s) of any individual who fails to prove by clear and convincing evidence that he or she meets the character requirements for a gambling license. RCW 9.46.075(8).

4.5 WAC 230-03-085 sets out with particularity the comprehensive authority of the Commission with regard to the denial, suspension, or revocation of gambling licenses and permits for individuals and businesses:

"We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

(6) Is the subject of an outstanding gross misdemeanor or felony arrest warrant;
or

(7) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

(a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or
(e) Associations; or

(9) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities."

4.6 WAC 230-06-085 (1) and (2), require a licensee to report all criminal actions filed against the licensee to the Commission within 30 days and require the licensee to supply the Commission with a copy of the final written decision or settlement of any criminal charges within 30 days after the case is resolved.

Analysis

4.7 As the following discussion will explain, Phonethipsavath has failed to bear his burden of establishing his qualifications for a gambling license by clear and convincing evidence. RCW 9.46.153(1).

4.8 Based on the foregoing Findings of Fact, Phonethipsavath had a history of repeated crimes of physical violence against another, failure to report his criminal history despite repeated opportunities to do so, and demonstrated willful and flagrant disregard for the law by intentionally violating a court's no contact order. The Licensee's desire to see his infant daughter, despite the court order, was neither exculpatory nor mitigating; rather, his conduct in carrying out his desire convincingly supported the Commission's position that the Licensee "poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling". WAC 230-03-085.

4.9 When Phonethipsavath's five year history of criminal misconduct, including admitted criminal domestic violence, and willful disregard of law and court orders is considered, it is concluded that, at this time in his life, Phonethipsavath is not interested in, or not capable of, self-control or self-policing. He therefore poses a present threat to the effective regulation of gaming and a present threat to the public in his position as a gambling licensee. WAC 230-03-085.

4.10 Because Phonethipsavath poses a present threat to the effective regulation of

gaming and a present threat to the public in his position as a gambling licensee, it is in the public interest that his gambling license be revoked. Based on the foregoing legal authorities, the Gambling Commission therefore has the power to suspend or revoke Phonethipsavath's gambling license, and has delegated the initial decision regarding suspension or revocation to the Office of Administrative Hearings through the provisions of RCW 9.46.140.

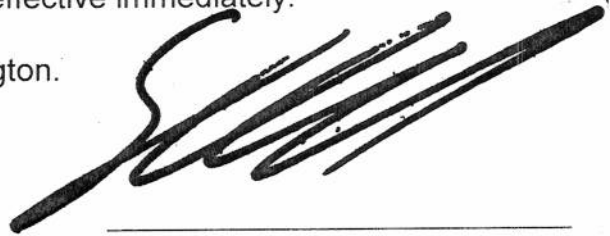
4.11 Accordingly, pursuant to the above Findings of Fact and Conclusions of Law, the gambling license of Thongkhanh Phonethipsavath shall be revoked. RCW 9.46.075, WAC 230-03-085 and WAC 230-06-085.

5. INITIAL ORDER:

IT IS HEREBY ORDERED,

Pursuant to law and public interest, the Public Card Room Employee License No. 68-15937 issued to Thongkhanh Phonethipsavath by the Washington State Gambling Commission is hereby revoked, effective immediately.

Signed: October 29, 2010 at Olympia, Washington.



Steven C. Smith
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES OF APPEAL RIGHTS

You may file an appeal of this order within twenty three days from the day OAH mails this initial order to you. WAC 230-17-090(2); *see also* WAC 230 -17 -030(2), WAC 230 -17 -035(2) [Service by first class mail is complete three days after mailing.]. An appeal from an initial order is known as a "petition for review". Your petition for review should (a) identify the parts of the initial order you disagree with and (b) refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Gambling Commission. If the Commission does not receive a petition for review within 23 days, the Commission will automatically make this order its final order.

Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time you file your reply.

Any party may file a cross appeal. Cross appeals must be filed with the commission within ten days of the date when the petition for review is filed with the Commission. WAC 230 -17 -090(5). If you wish to make a cross appeal, you must serve copies of the cross appeal upon all other parties or their representatives at the same time you file your cross appeal.

If a party timely files a petition for review, then at least a majority of the Commission members shall review the petition within 120 days and render a final order.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, addressed as follows, with postage prepaid, or by personal delivery, as indicated.

Signed at Olympia, Washington, this 29th day of October 2010.


Representative, Office
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